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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/774,275	01/30/2001	Aaron Strand	8362-CIP-DIV	2989
22922	7590	02/12/2004	EXAMINER	
REINHART BOERNER VAN DEUREN S.C. ATTN: LINDA GABRIEL, DOCKET COORDINATOR 1000 NORTH WATER STREET SUITE 2100 MILWAUKEE, WI 53202			PASCUA, JES F	
		ART UNIT	PAPER NUMBER	
		3727	30	
DATE MAILED: 02/12/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/774,275	STRAND ET AL. <i>CG 27</i>
	Examiner	Art Unit
	Jes F. Pascua	3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 28 November 2003.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 75-116 is/are pending in the application.
 - 4a) Of the above claim(s) 79,80,99 and 100 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 75-78,81-98 and 101-116 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 30 January 2001 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 25 & 27.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the perforations (claims 90 and 110), the scoring (claims 91 and 111), the microperforations (claims 92 and 112), the sheet of web material being a "multiple laminate film" (claims 93, 94, 113 and 114) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 75-78, 81-85, 89, 90, 92, 96-98, 101-105, 109, 110, 112 and 117 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Plourde.

Regarding claims 92 and 112, the generic perforations 40 of Plourde are considered to include and meet the structure of applicant's "microperforations".

4. Claims 75-78, 81-85, 89, 90, 92, 96-98, 101-105, 109, 110 and 112 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Plourde.

Regarding claims 92 and 112, the generic perforations 40 of Plourde are considered to include and meet the structure of applicant's "microperforations".

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 86-88 and 106-108 are rejected under 35 U.S.C. 103(a) as being unpatentable over Plourde.

Plourde discloses the claimed invention except for the areas of structural weakness extending nonlinearly across a predetermined dimension of the sheet of web material. It would have been an obvious matter of design choice to make the areas of structural weakness in Plourde extend nonlinearly across a predetermined dimension of the sheet of web material. A change in form or shape is generally recognized as being

within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

7. Claims 91 and 111 are rejected under 35 U.S.C. 103(a) as being unpatentable over Plourde.

Plourde discloses the claimed invention except for the areas of structural weakness comprising scoring. It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the perforations 40 of Plourde with scoring since the Examiner takes Official Notice of the equivalence of scores and perforations for their use in the bag art and the selection of any of these known equivalents to provide the bag with an area of structural weakness would be within the level of ordinary skill in the art.

8. Claims 93-95 and 113-115 are rejected under 35 U.S.C. 103(a) as being unpatentable over Plourde.

Plourde discloses the claimed invention except for the sheet of web material forming the bag comprising a multiple laminate film. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a multiple laminate film for the sheet of web material in Plourde, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. As a note, using a multiple laminate film for the sheet of web material in

Plourde would inherently result in "at least one layer of material comprising" the tear path of the perforations 40.

Regarding claims 95 and 115, Plourde discloses the claimed invention, as discussed above, except for tear path being hermetic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to hermetically seal the tear path of Plourde since it was known in the art that hermetically sealing tear paths in bags prevents the bag contents from leaking through the tear path and prevents air leaking in or out of the bag through the tear path.

9. Claim 116 is rejected under 35 U.S.C. 103(a) as being unpatentable over Plourde.

Plourde discloses the claimed invention except for the sheet of web material 10 having at least one tear tape structure. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the web material of Plourde with at least one tear tape structure since it was known in the art that tear tape structures facilitate the tearing of areas of structural weakness on bags.

Response to Arguments

10. Applicant's arguments filed 11/28/03 have been fully considered but they are not persuasive.

Applicant's reluctance to submit drawing corrections is noted. However, applicant is reminded that the drawings are being objected to under 37 CFR 1.83(a) not 37 CFR 1.81(a) as argued by applicant.

Applicant's amendment to claim 116 has overcome the rejection under 35 U.S.C. 112 in the 09/05/03 Office action.

The remainder of applicant's remarks relies on the argument that Plourde does not disclose a reclosable bag having at least one fold structure and an opening located generally opposite the fold structure. The Examiner respectfully disagrees with applicant. The side opening through which the bag 16 of Plourde is filled with product is "generally opposite" the fold structure 20 since the bag 16 is coupled to the skirt structure 32 and the skirt structure 32 is *generally opposite* the fold of the fold structure 20.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 703-308-1153. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jes F. Pascua
Primary Examiner
Art Unit 3727

JFP